

After reviewing the record and considering the arguments, the Appeals Board finds that the award should be modified. The Appeals Board agrees with the conclusion

claimant suffered no permanent disability. The Board disagrees with the award of future medical expenses.

### **Findings of Fact**

1. Claimant worked as a long-distance truck driver from November 1980 to March 1, 1992. Throughout the period of employment, claimant experienced occasional problems with a pilonidal cyst. In 1992, the problem became more frequent. Claimant sought medical treatment from his family physician who in turn referred him to Dr. Jace W. Hyder, a general surgeon. On March 26, 1992, Dr. Hyder performed surgery to remove the cyst.
2. Claimant had a cyst in the same place in 1958 while in the Navy. On that occasion, the cyst was removed and the wound healed quickly.
3. After the surgery in March 1992, the wound did not heal properly. Claimant also has diabetes and Dr. Hyder testified the diabetes probably interfered with proper healing. In September 1992, because the wound was not healing properly, Dr. Hyder referred claimant to Dr. John H. Rempel, a plastic surgeon. On October 8, 1992, Dr. Rempel performed surgery to close the wound. Dr. Hyder saw claimant again in August 1993, approximately ten months after the surgery by Dr. Rempel. The notes from that visit do not mention another physical examination. Rather, the note indicates claimant was there to "discuss percentage of disability." Dr. Hyder concluded claimant had a 40 percent impairment to the body as a whole. The rating was not based on AMA Guides because, according to Dr. Hyder, the AMA Guides do not cover the topic. Dr. Hyder also opined that claimant could not return to long-distance driving and should not do work which required that he sit more than 20 to 40 minutes at a time and that he should have 20 to 40 minutes between occasions when he was sitting.
4. Dr. Rempel testified the cyst had been operated on three times, once 20 years earlier, once 12 years earlier, and then again in 1992. Dr. Rempel agreed the diabetes was a factor in the healing process. Dr. Rempel concluded the cyst would not prevent claimant from returning to work as a long-distance truck driver. Dr. Rempel noted claimant also has arthritis in his hips, elbows, and knees; has had four heart attacks; and has stomach ulcers. He agreed claimant should not return to long-distance driving but only because of the other health problems. He disagreed with Dr. Hyder's testimony that claimant would have a recurrence of the problem if he returned to long-distance driving. He did not consider it likely claimant would have any future recurrence of the problem. He rated the impairment from the pilonidal cyst as zero.

### **Conclusions of Law**

1. The Board finds the testimony of Dr. Rempel to be persuasive and, based on that testimony, concludes claimant has no permanent disability from his employment with respondent as disability is defined in K.S.A. 1991 Supp. 44-510e. Claimant did not make temporary total disability an issue before the Appeals Board.

2. Because claimant has no permanent disability, he is not entitled to have future medical expenses paid by respondent. If treatment is necessary in the future, it would necessarily be from a new injury.

3. Claimant is entitled to have medical expenses for treatment of the cyst paid by respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the December 18, 1997 Award of Administrative Law Judge Jon L. Frobish should be, and is hereby, modified.

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Jackie D. Johnson, and against the respondent, Clearwater Trucking Company, and its insurance carrier, Gulf Insurance Company, for medical compensation only.

Claimant is entitled to unauthorized medical expense up to the statutory maximum.

Claimant's request for future medical expenses is denied.

Claimant's attorney fee contract is approved insofar as it is not in contravention of the applicable version of K.S.A. 44-536.

The Appeals Board adopts the orders by the ALJ relating to court reporting expenses.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Andrew E. Busch, Wichita, KS  
Brenden W. Webb, Overland Park, KS  
Jon L. Frobish, Administrative Law Judge

**JACKIE D. JOHNSON**

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**DOCKET NO. 195,278**

Philip S. Harness, Director